

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LONTEX CORPORATION

Plaintiff,

v.

NIKE, INC.,

Defendant.

Civil Action No. 2:18-cv-05623-MMB

**PLAINTIFF LONTEX CORPORATION’S MOTION TO EXCLUDE THE SURVEYS,
REPORTS, AND RELATED TESTIMONY OF HAL PORET, MATTHEW EZELL, AND
CAROL A. SCOTT, PH.D.**

Pursuant to Federal Rules of Evidence 403 and 702, and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), Plaintiff Lontex Corporation (“Lontex”) respectfully moves this Court for an order excluding the reports, surveys, and related testimony concerning likelihood of confusion and consumers’ purchase interests by Nike, Inc.’s (“Nike”) experts Hal Poret, Matthew Ezell, and Carol A. Scott, Ph.D. The Court should exclude these reports, surveys, and related testimony for the reasons set forth in Lontex’s Memorandum of Law in Support of Lontex Corporation’s Motion to Exclude the Surveys, Reports, and Related Testimony of Hal Poret, Matthew Ezell, and Carol A. Scott, Ph.D., along with, supporting declarations, accompanying exhibits served concurrently herewith, all briefing and evidence including reply filed by Lontex with respect to this motion, the pleadings in this case including all operative pleadings, all oral argument heard on the motion, and all items to which Lontex may obtain judicial notice.

The exclusions requested include:

1. Full exclusion of all three survey experts' surveys, opinions and analysis for failure to conduct surveys that measured from an appropriate sampling universe;
2. Exclusion of Poret and Ezell's surveys, opinions and analysis as to reverse confusion;
3. Full exclusion of Poret's survey, opinions and analysis for an unacceptably high level of survey noise; and
4. The three surveys should also be excluded under Federal Rules of Evidence 403.

Dated: November 4, 2020

TROUTMAN PEPPER HAMILTON
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By: /s/ Ben L. Wagner

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2020, a true and correct copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent via e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Ben L. Wagner

Ben L. Wagner